IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4628 OF 2005

The State of Maharashtra ...Applicant
Vs.
Punjaji Sitaram Late ...Respondent

Shri K.V. Saste, A.P.P. for the Applicant.

CORAM : A. S. OKA, J.
DATE : OCTOBER 17, 2005.

P.C.:

1. This is an Application made by the State for cancellation of Anticipatory Bail granted in favour of the Respondent by order dated 30th September, 2004 passed by the learned 3rd Additional Sessions Judge, Thane.

2. The complaint was filed by an investor of Ms/.Adhunik Griha Nirman Vittya Corporation Ltd., against the Respondent for the offences punishable under sections 420, 408 read with section 34 of the Indian Penal Code. The case of the prosecution is that the Respondent is a Director of the said Company as is reflected from the Articles of Association of Company. When an Application for Anticipatory Bail was made by the Respondent, the learned Additional Sessions Judge initially granted ad-interim relief. The operative part of the order dated 30th September, 2004 reads thus:

> . Interim Anticipatory bail granted to the applicant on 4.9.2004 is made absolute on the same terms and

conditions.

. The applicant to appear before the Investigating Agency when called and to co-operate the Investigating Agency.

3. The learned A.P.P. submitted that there was prima facie material on record to show that the Respondent was a Director of the Company at the relevant time. He submitted that the Company has collected large deposits from the members of the public. He pointed out that the Anticipatory Bail has been granted for unlimited duration without imposing conditions contemplated by section 438(2) of the Code of Criminal Procedure, 1973. He has placed reliance on affidavit of Dilip Maruti Godbole, Police Inspector attached to C.I.D.(Crime), Flying Squad, M.S. Pune to show that the Respondent is absconding. He submitted that the Respondent has never co-operated for investigation.

4. This court issued notice to the Respondent on 09th August, 2005. Noting made by the office discloses that the notice could not be served on the Respondent as he was not available at the address. The report states that as his mother and wife did not accept the notice, the same was pasted on the house of the Respondent. This court, therefore, on an Application made by the State directed fresh notice to

be issued which was to be served by substituted service. The affidavit of Shri. V.S.Deshpande, Police Inspector discloses that on 15th October, 2005 the notice was attempted to be served on the Respondent at the address of the Respondent. Though the Respondent was not present, his son accepted the notice. At that time, the statement of the son of the Respondent was recorded in which he stated that he was not aware about the whereabouts of the Respondent for last eight months. The affidavit discloses that notice was also served by affixing. The address of the Respondent is the one given by him in his Application for Anticipatory Bail. Thus Respondent is not available at the given address. It is thus apparent that the Respondent did not make himself available for investigation as per the condition imposed while granting Anticipatory Bail. Only on the ground of breach of condition, the Anticipatory Bail deserves to be cancelled. It must be noted here that the learned Sessions Judge granted Anticipatory Bail for unlimited duration which is not permissible by law.

5. Hence, I pass the following order:

: O R D E R :

i) The Application is allowed.

ii) Anticipatory Bail granted to the Respondent by order dated 30th September, 2004 stands cancelled.

JUDGE